

Amendment No. 1 to SB1634

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 1634

House Bill No. 1430*

by deleting the amendatory language of SECTION 4 and by substituting instead the following:

(b)

(1) Upon any hearing or trial, the establishment of a criminal gang as a nuisance under § 29-3-101(a)(2)(B) need only be proven by clear and convincing evidence, notwithstanding any references under this chapter to the criminal code. Neither a criminal conviction nor a finding of juvenile delinquency is required in order to prove, by clear and convincing evidence, that particular conduct is gang related conduct to be abated as a nuisance under this chapter. Gang related conduct to be abated as a nuisance may be proven through the testimony of a fact witness, an expert witness, or a combined fact-expert witness pursuant to the rules of evidence.

(2) If, upon any hearing or trial, the existence of a gang related nuisance is established under § 29-3-101, an order of abatement shall be entered as part of the judgment or decree of the court. That order shall enjoin perpetually the defendant or defendants from engaging in, conducting, continuing, aiding or abetting the nuisance, directly or indirectly.

(3) In addition to the relief permitted in subdivision (b)(2), the court may designate a certain geographically defined area or areas in any temporary or permanent gang injunction, which are narrowly tailored in compliance with prevailing constitutional case law for one (1) or more of the following purposes:

Amendment No. 1 to SB1634

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 1634

House Bill No. 1430*

(A) Preventing the gang from gathering in public in groups of two
(2) or more members; and

(B) Preventing any gang member from entering any specific
public park or parcel of property where the gang has been found to have
carried out its operations.

(4) All gang injunctions shall also include an “opt out” provision permitting
an individual to seek an order of dismissal from the injunction upon proper
application to the court, with thirty (30) days' notice to the petitioner, truthfully
stating that the individual renounces involvement with that particular gang, which
is the subject of the gang injunction, and for the last two (2) years:

(A) Has not committed any crimes or engaged in any form of
criminal conduct, not including any time spent incarcerated;

(B) Has not been in the company, or association, of any person
found under this chapter to be a gang member, other than an immediate
family member; and

(C) Has not obtained any new gang-related tattoos.

AND FURTHER AMEND by inserting the following language as a new SECTION 5 and by
redesignating the subsequent sections accordingly:

SECTION 5. Tennessee Code Annotated Section 29-3-110 is amended by
adding the following as a new subsection (d):

(d)

(1) Any person who is not specifically named in a gang injunction issued pursuant to subsection (b) may be subject to the injunction by service upon the person of:

(A) A petition by the original petitioner to amend the injunction to specifically include the person; or

(B) A summons and a copy of the injunction.

(2) Service of the petition or summons shall include a date, time, and place of a hearing, where the original petitioner shall be required to show why the person should be subject to the injunction.

(3) A person who is added to the injunction under subdivision (d)(1) shall be subject to § 29-3-111 for any conduct occurring after the date the person is added to the injunction.

(4) A person who is added to the injunction under subdivision (d)(1) shall be afforded the same opt-out provisions under subdivision (b)(4).

AND FURTHER AMEND by inserting the following language as a new section immediately prior to the effective date section and by renumbering the subsequent section accordingly:

SECTION ___. No later than April 1 of each year, the Commissioner of Safety, after consulting with the petitioners where gang injunctions permitted by this Act are in effect, shall submit a detailed, written report to the Judiciary Committee of the Senate and the Civil Justice Committee of the House of Representatives regarding the implementation of this Act and containing relevant data for the previous calendar year that shall include, but not be limited to:

(1) The number of injunctions against criminal gangs in effect;

(2) The number of persons charged with violating a gang injunction under Section 29-3-111(a);

(3) The number of persons convicted for violating a gang injunction under Section 29-3-111(a); and

(4) All criminal charges filed during the previous calendar year against persons specifically named in a gang injunction.